

Appl. No. 10/840,065
Amdt. dated Aug. 25, 2006
Reply to Office action of June 12, 2006

REMARKS/ARGUMENTS

The Examiner has rejected claims 1 and 2 and 4-8 under 35 U.S.C. 103 as being unpatentable over Vassar (883) in view of Cohen (621) indicating that the Vassar reference discloses limitations substantially as claimed.

The Examiner goes onto say that Vassar does not specifically disclose the material make-up of the insert and cites the Cohen 621 to teach an insert used inside a shoe support that could be made of a close cell cross link polyethylene allowing it to be tough and abrasion resistant and yet flexible.

It is respectfully submitted that the claims as now amended distinguish themselves patentably over the prior art for the following reasons.

Claim 1 has been amended to include a distinct structural limitation only in applicant's device in which the side surfaces are contoured laterally defining an area of maximum transverse dimension "between a tapered upper front heel portion surface and a tapered upper foot portion surface" in "longitudinally" spaced relation to said arcuate heel surface.

It is clear that Vassar does not show this distinguishing structural feature and in fact defines only one surface of equal lateral configuration with no transverse area of increased transverse dimension as applicant has indicated and now claims.

The Cohen reference which is cited to show a cross-link polyethylene actually discloses multiple material for the insole in which the top layer is softer for partial compression than that of the substantially lower level.

Applicant's utilization of a monolithic block formed in a unique structural configuration of synthetic resin foam being of a cross-link polyethylene composition is by combination defines a unique and novel structure having the desired soft engagement then firm supportive quality. While the Vassar reference does accomplish a similar end result it does not do it with the same structural and material limitations as set forth by applicant. None would by combining the multiple layer closed cell foam of Cohen as a monolithic mass in the Vassar reference provide the same structural quality as applicant's due to the specific limitations required of multi-layered requirement cited in Cohen.

It is therefore respectfully submitted that the claims as now amended distinguish themselves over the prior art references individually and in combination and therefore are in condition for allowance and the same is respectfully requested.

Respectfully submitted,

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